



February 23, 2012

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1500 Pennsylvania Avenue, NW
Washington, DC 20220

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Federal Housing Finance Agency
Fourth Floor
1700 G Street, N.W.
Washington, DC 20552

Department of Housing and Urban Development
451 7th Street, SW
Room 10276
Washington, DC 20410-0500

Board of Governors of the Federal Reserve
System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

Office of the Comptroller of the Currency
250 E Street, SW
Mail Stop 2-3
Washington, DC 20219

Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Re: RIN 1557-AD40; 7100 AD 70; 3064-AD74; 3235-AK96; 2590-AA43; 2501-AD53

Ladies and Gentlemen:

The American Securitization Forum (“ASF”) appreciates the opportunity to submit this letter in connection with the notice of proposed rulemaking (the “Proposed Regulations”) entitled “Credit Risk Retention” (RIN 1557- AD40; 7100 AD 70; 3064-AD74; 3235-AK96; 2590-AA43; 2501-AD53), issued pursuant to Section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank”). We are submitting this letter as a follow up to our telephone conversation with certain of your staff on December 19, 2011 to provide further details with respect to questions raised on the call with respect to the portions of our comment letter dated June 10, 2011 regarding the Proposed Regulations (the “ASF Comment Letter”)¹ relating to asset-backed commercial paper conduits (“ABCP conduits”). We appreciate the opportunity to make this supplemental submission. Our more detailed responses to your questions from our telephone call follow.

¹ See: http://www.americansecuritization.com/uploadedFiles/ASF_Risk_Retention_Comment_Letter.pdf.

1. Question on the comment provided in paragraph d on page 101 of the ASF Comment Letter regarding structures that do not require the use of a special purpose entity (an “SPE”) to achieve bankruptcy remoteness.

As we discussed on our call, there are three common types of such structures: (1) repurchase agreement/securities contract structures that qualify for a special safe harbor under the U.S. Bankruptcy Code, (2) transactions with certain governmental and nonprofit entities that are viewed as bankruptcy remote without the need to sell the securitized assets to an SPE, and (3) transactions with foreign originators of financial assets where the insolvency laws of the foreign jurisdiction do not require the use of an SPE to achieve bankruptcy remoteness. Further detail is set forth below.

a. Repurchase Agreements and Securities Contracts

In order to isolate securitized assets from claims of other creditors of asset originators that are eligible to be debtors under the U.S. Bankruptcy Code, it is typically necessary for those assets to be transferred in a legal true sale to a special purpose entity that enters (directly or indirectly) into a secured financing transaction. Special provisions of the Bankruptcy Code, however, apply to “repurchase agreements” and “securities contracts” that make it unnecessary to structure the subject transaction as a legal true sale of assets to a special purpose entity.² Specifically, among other things, assets transferred under these arrangements are exempt from the automatic stay that would otherwise apply under Section 362(a) of the Bankruptcy Code to prohibit a creditor of a bankruptcy debtor from taking action to realize on the assets upon a bankruptcy filing and from the prohibition on “ipso facto” clauses under Section 365(e)(1) of the Bankruptcy Code that would normally prevent a creditor from exercising its right to realize on transferred assets based only on the fact that the asset transferor became a bankruptcy debtor.³

As a result, ABCP conduit transactions financing eligible assets can be, and have been, structured as repurchase agreements directly between the owner of the assets and the ABCP conduit. The assets are transferred to the ABCP conduit with an obligation on the part of the asset transferor to repurchase at a specified future date. If the asset transferor becomes a bankruptcy debtor, the ABCP conduit is permitted to foreclose on or otherwise dispose of the transferred assets without interference from the bankruptcy trustee or other creditors of the asset transferor.

b. Securitizations by Governmental and Non-profit Entities

Certain governmental entities are not subject to becoming debtors under the Bankruptcy Code or any other insolvency regime. In addition, municipalities and certain public purpose and non-profit organizations are not considered “moneyed, business or commercial corporations” under section 303 of the Bankruptcy Code and therefore an involuntary case cannot be commenced against them by their creditors.⁴ While certain of these entities are eligible to file for bankruptcy

² 11 U.S.C. §§ 555 and 559.

³ 11 U.S.C. §§ 362(a) and 365(c)(1).

⁴ 11 U.S.C. § 303(a).

protection voluntarily, because of the nature of the activities and need for continued access to financing by certain of these entities they are considered highly unlikely to do so. As a result, these entities are considered bankruptcy remote and may enter into securitization transactions directly with ABCP conduits.

c. Securitizations for Certain Foreign Originators

In certain foreign jurisdictions, either (i) there is no functional equivalent to the concept of an automatic stay or other prohibitions against secured creditors taking action to realize upon financial asset collateral upon or following the asset originator becoming the debtor in an insolvency proceeding or (ii) there exist certain exemptions from such provisions for properly structured securitization transactions. It is therefore not necessary to sell the financed assets to a special purpose entity in such jurisdictions in order to achieve the functional equivalent of bankruptcy remoteness.

As an example, under English law it is possible to structure a financing transaction directly between an asset originator that is not insolvency remote and an ABCP conduit that isolates the ABCP conduit from the insolvency risk of the asset originator. Under the UK Enterprise Act of 2002⁵ holders of floating charges are permitted to appoint an administrative receiver over a company if (i) done pursuant to an agreement that is or forms part of a “capital market arrangement,”⁶ (ii) at least £50 million (or its equivalent in another currency) is incurred or expected to be incurred during the life of such arrangement and (iii) a “capital market investment” is issued.⁷ A person that is entitled to appoint an administrative receiver can veto the administration of a company under the Insolvency Act of 1986.⁸ This has the effect of making the transaction in question insolvency remote without the use of a special purpose entity.

We also wish to clarify that it is our assumption that there would be no intent in the final risk retention regulation to restrict the activities of eligible ABCP conduits to entering into only securitization transactions. It is our belief that the risk retention requirements should only apply to those transactions entered into by ABCP conduits that are themselves “securitization transactions” as that term is defined in the Proposed Regulations and should not operate to restrict ABCP conduits from entering into other types of high credit quality transactions (e.g. secured loans to high grade borrowers, covered bonds, capital call transactions) where there is full recourse to the owner of the financed assets.

With respect to ABCP conduit transactions that are securitization transactions within the meaning of the Proposed Regulations, we would strongly urge you not to require as part of the final regulations that a legal opinion or opinions be obtained in order to substantiate that a particular transaction is “bankruptcy remote” in the event of the bankruptcy or insolvency of the

⁵ Enterprise Act. 2002. c. 40 (Eng.)

⁶ Under the Enterprise Act, a capital market arrangement is a financial arrangement in which at least one party to the arrangement benefits from a security interest, financial guarantee or derivative contract.

⁷ Under the Enterprise Act, a capital market investment is one in which debt securities are issued and are designed to be, or are, listed, traded or rated by an internationally recognized rating agency.

⁸ Insolvency Act. 1986. c. 45 (Eng.).

asset originator. While it is common practice for ABCP conduits and their sponsors to obtain such opinions in most transactions, mandating the method by which ABCP conduits evaluate and obtain legal advice with respect to these issues seems to us an unnecessary and burdensome requirement as long as the appropriate amount of risk retention is present in the relevant transaction structure.

2. Question regarding the use of multiple SPEs that the ASF asked in the ASF Comment Letter be treated collectively as an ABCP conduit for purposes of the risk retention regulations.

As we described on our phone call, certain ABCP conduits operate through a structure under which a U.S. ABCP issuer issues U.S. ABCP and lends the U.S. ABCP proceeds to an entity organized in a foreign jurisdiction that funds customer securitization transactions using such U.S. ABCP proceeds. As we indicated, it is fairly common with such structures for the liquidity facility to be written to the foreign entity. By the terms of the loan agreement between the foreign entity and the U.S. ABCP issuer, the foreign entity is obligated to pay over liquidity proceeds to the U.S. ABCP issuer to the extent necessary to enable the U.S. ABCP issuer to timely repay its U.S. ABCP. In order to comply with the proposal in the ASF Comment Letter, it is necessary to treat the U.S. ABCP issuer and the foreign entity, collectively, as an “eligible ABCP conduit.” An illustration of a typical multi-entity ABCP conduit structure is attached as Exhibit A.

3. Question as to whether we are aware of entities other than Straight A Funding LLC that rely on governmental entities to provide liquidity.

After our call, our members discussed this question more broadly and discovered that there are several ABCP conduits in addition to Straight A Funding LLC in the market that rely upon governmental entities and government-sponsored entities (“GSEs”) for credit and liquidity support. A brief description of certain of these entities is attached as Exhibit B. We continue to believe it is appropriate that governmental entities and GSEs be permitted to act as eligible support providers for ABCP conduits in the final risk retention rules. As demonstrated by Straight A Funding, ABCP conduits that are supported by governmental entities and GSEs can provide a vital source of funding to the markets and help assure continued access to credit to American consumers and businesses when issues arise with access to the capital markets by non-governmental sources. We see no significant policy reasons why eligible support providers should be limited to the banks to the exclusion of these entities should they choose to provide support to ABCP conduits in the future.

4. **Question regarding grandfathering of existing structures as it relates to potential need to make changes to conduit program documents in order to comply with risk retention regulations. Specific questions were asked as to whether ABCP conduits would be required to redeem ABCP and what else would be necessary under the legal documents in order to effectuate amendments. A question was also asked as to whether conduit program documents would allow changes to be made without consents to the extent necessary to comply with existing laws and regulations.**

As we described on our phone call, the general process for making material amendments to conduit program documents requires obtaining rating agency consents or confirmations to the effect that the proposed amendments will not adversely affect the ratings on the ABCP conduit's ABCP. While your staff asked whether these consents are necessary as a matter of law or could merely require ABCP be sold at a lower rating level or without a rating, as we indicated on the call as a practical matter, there is no significant market for ABCP that is not rated at the highest short-term ratings level by at least two rating agencies. In effect, therefore, rating agency consents are a necessity. Most importantly, money market funds have a very limited capacity to buy ABCP that is not rated in the highest short-term rating category by at least two rating agencies. A majority of money market funds are rated by one or more credit rating agencies and therefore must buy only rated ABCP regardless of any changes in Rule 2a-7 under the Investment Company Act of 1940 to remove references to credit ratings as mandated by Dodd-Frank.

You have asked that our members provide data with respect to the following:

- (1) Percentage of the ABCP market represented by money market fund buyers; and
- (2) Percentage of the money market fund holdings that consist of ABCP.

It is difficult to obtain accurate data with respect to these questions. The best source of this data are the credit rating agencies, though none of the credit rating agencies rates all of the ABCP outstanding in the market place, so any figure from any one credit rating agency will be artificially low. We estimate that, based upon data obtained from Moody's Investors Service ("Moody's") with respect to ABCP conduits with commercial paper rated by Moody's, as of January 18, 2012, at least \$142 billion of the more than \$344.5 billion ABCP market was held by money market funds. This represents approximately 41% of the ABCP market. The \$142 billion of ABCP held by money market funds represents approximately 6% of the \$2.363 trillion holdings of taxable money market funds generally based upon Federal Reserve data for January 18, 2012.

As we further discussed, it is not contractually possible in most cases to redeem ABCP and it is therefore general practice to time material changes to ABCP conduit program documents with the latest maturing commercial paper note issued by the ABCP conduit prior to the disclosure of the proposed changes. In this way, ABCP conduits and their sponsors can be confident that any purchase of ABCP affected by the changes is made with full knowledge of such changes. This could require up to 397 days (if our request for that number of days as a maximum maturity for

ABCP is accepted in the final risk retention regulations) depending upon the current maturity profile of the relevant ABCP conduit at the time of the required changes.

Finally, we indicated on our call that as a general matter ABCP conduit program documents do not permit amendments without necessary consents due to changes in laws and regulations.

5. Request for data regarding the percentage of the ABCP market represented by paper with maturities between 271 and 367 days (data as to current outstandings and approximate annual volume, in each case, at >270).

After discussing this question with our broader membership following our call, it has become clear that the percentage of the ABCP market today represented by notes with maturities greater than 270 days is negligible. Our request in the ASF Comment Letter to permit maturities of up to 397 days (the maximum maturity of debt securities that may be purchased by money market funds under Rule 2a-7) is in anticipation of new liquidity requirements that are to be imposed by banking regulations implementing the Basel Committee's proposed liquidity coverage ratio and net stable funding ratio. The effect of these ratios will be to encourage banks to issue or provide credit and liquidity support to longer term capital markets liabilities where possible. Extending the permissible maturity of ABCP to 397 days would assist banks in this effort. We see no countervailing policy reason under the risk retention rules for limiting ABCP to maturities of 270 days or less.

Should you have any questions or desire any clarification concerning the matters addressed in this letter, please do not hesitate to contact me at 212.412.7107 or at tdeutsch@americansecuritization.com.

Sincerely,

A handwritten signature in cursive script that reads "Tom Deutsch".

Tom Deutsch
Executive Director
American Securitization Forum

EXHIBIT A - EXAMPLE MULTI-ENTITY ABCP CONDUIT STRUCTURE

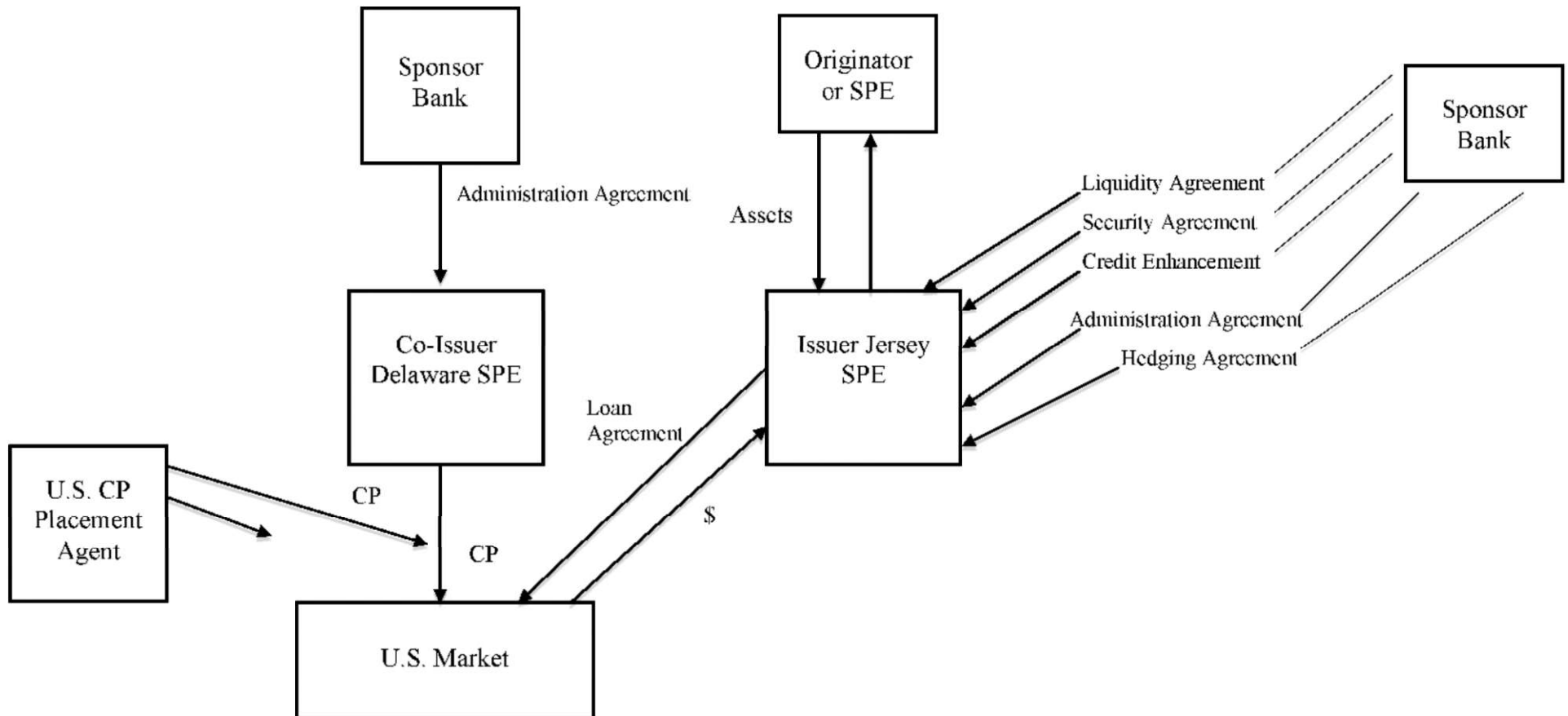


EXHIBIT B

ADDITIONAL ABCP CONDUITS WITH GOVERNMENTAL ENTITY SUPPORT

Royal Park Investments Funding Corp. (RPI):

Established: December 2009

Ratings: A1+/P1

Relevant Sovereign Support: Belgium

Assets: Legacy assets from Fortis Bank portfolio

Basic Structure: Guarantee

Program Manager: Royal Park Investment SA

Program Size: \$6 billion

Current outstandings (USCP): Approx. \$5 billion

Kells:

Established: November 2010

Ratings: A-1+/P1

Relevant Sovereign Support: Germany Finance Ministry Agency ("FMSW")

Assets: Legacy assets from Hypo Real Estate Group

Basic Structure: "Repo-backed"

Program Manager: Depfa Bank

Program Size: \$30 billion

Current outstandings (USCP): Approx. \$20 billion